

ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author: Soto Analyst: Rachel Coco Bill Number: SB 1193
Related Bills: See Legislative History Telephone: 845-4328 Amended Date: June 29, 2004
Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: Exclusion/Death Benefits Received By Surviving Spouse Or Beneficiary Of Member Of California National Guard, State Military Reserve Or Naval Militia Who Dies In Performance Of Duty

SUMMARY

This bill would create a death benefit, which would be excluded from tax, for the surviving spouse or beneficiary of certain military personnel killed in the performance of duty.

SUMMARY OF AMENDMENTS

The June 29, 2004, amendments added language that would specify that the death benefit be paid for any member who dies or is killed after March 1, 2003.

The June 21, 2004, amendments added language that would exclude from income tax certain death benefits paid to eligible individuals.

This is the department's first analysis of the bill.

PURPOSE OF THE BILL

According to the author's office, the purpose of this bill is to provide relief in the form of a tax-exempt benefit to surviving family members of certain deceased military personnel.

EFFECTIVE/OPERATIVE DATE

The provision that would provide the death benefit would be effective upon enactment and operative upon appropriation by the Legislature for purposes of funding the benefit payments. The provision that would allow the death benefit to be excluded from income would be operative for taxable years beginning on or after January 1, 2005.

POSITION

No position.

Board Position:

_____ S	_____ NA	_____ X _____ NP
_____ SA	_____ O	_____ NAR
_____ N	_____ OUA	_____ PENDING

Department Director

Date

Gerald H. Goldberg

7/14/04

ANALYSIS

FEDERAL/STATE LAW

Existing federal and state tax laws provide that gross income includes all income from whatever source derived, including compensation for services, business income, gains from property, interest, dividends, rents, and royalties, unless specifically excluded.

Existing federal law provides a death gratuity payable to a qualified survivor of a deceased member, former member, or person entering the service of the Armed Forces of the United States. Recently enacted federal legislation (Public Law 108-121) increased the death gratuity amount from \$6,000 to \$12,000. In addition, the entire gratuity amount is now excludable from gross income under federal tax law.

Under current state law \$3,000 of the federal death gratuity is excludable from gross income.

THIS BILL

This bill would enact the California National Guard Surviving Spouses And Children Relief Act Of 2004.

This bill would require the state to pay a \$10,000 death benefit to the surviving spouse or member-designated beneficiary when any member of the California National Guard, State Military Reserve, or Naval Militia dies or is killed after March 1, 2003, in the performance of duty.

The bill states that the Military Department would be responsible for determining if the death occurred in the performance of the member's duty.

The bill would require the state to pay the benefit within 10 days of receipt of a certificate of benefit eligibility from the Military Department.

This bill also provides that the entire amount of the death benefit payment is excluded from gross income for state income tax purposes.

The bill specifies that the operative date of the provision requiring the payment of the death benefit would be the date of an appropriation by the Legislature for the purpose of funding the payments. The operative date of the provision providing the exclusion from income for the payments would be January 1, 2005.

IMPLEMENTATION CONSIDERATIONS

Implementing this bill would not significantly impact the department's programs or operations.

LEGISLATIVE HISTORY

AB 1073 (Dutton & Parra, 2003/2004) would exclude from tax the full amount of the federal death gratuity paid to the survivor of a deceased member of the Armed Forces of the United States. This bill is currently in the Senate Appropriations Committee.

SB 1713 (Machado, 2003/2004) would conform California to the federal Military Family Tax Relief Act Of 2003 (MFTRA) that was enacted on November 11, 2003. SB 1713, among other relief for military families, would also exclude from tax the full amount of the federal death gratuity paid to the survivor of a deceased member of the Armed Forces of the United States. This bill is currently in the Senate Appropriations Committee.

AB 2952 (Mountjoy, et al. 2003/2004) would exempt from tax the first \$50,000 in income of a surviving spouse of a member of the Armed Forces who dies in a military combat or terrorist action for the year of the member's death. This bill is currently in the Senate Revenue and Taxation Committee.

SB 615 (Cedillo, 2003/2004) would make California law compatible with the federal Servicemembers Civil Relief Act (PL 108-189) that was enacted on December 19, 2003. SB 615, among other relief for military families, would also provide that the military compensation of a servicemember not domiciled in this state may not be used to increase the tax liability imposed on other income earned by that servicemember or that servicemember's spouse. This bill is currently in the Senate awaiting a concurrence vote.

OTHER STATES' INFORMATION

The states surveyed include *Illinois, Massachusetts, Michigan, Minnesota, and New York*. These states were selected due to their similarities to California's tax laws and population.

Illinois, Massachusetts, Michigan, New Jersey, and New York do not tax military survivorship benefits received from the U.S. uniformed services.

Minnesota taxes all income, including survivorship benefits, received as a resident of the state regardless of the source.

FISCAL IMPACT

This bill would not significantly impact the department's costs.

ECONOMIC IMPACT

Revenue Estimate

This bill would result in the following revenue losses:

Revenue Impact of SB 1193			
Fiscal Year	2004-05	2005-06	2006-07
Impact	*Insignificant	*Insignificant	*Insignificant

* Insignificant equals less than \$150,000

Based on the discussion below, the revenue loss from this bill is estimated to less than \$26,000 annually.

Revenue Discussion

Due to uncertainties regarding future events, revenue losses are based on information from the Department of Defense prepared by the Washington Headquarters Services Directorate of Information Operations and Services regarding the number of military deaths for the last 10 years. During this period total military deaths (accidental, hostile action, homicide, illness, pending, self inflicted and terrorist attack) averaged approximately 941 annually, with a high of 1,213 in 1993 and a low of 774 in 2000. For this analysis the average annual number of military deaths over the last 10 years was used under the assumption that approximately 11% of all military deaths would have California beneficiaries ($941 \times 11\% = 104$). Of that total, it is estimated that approximately half of the deaths would be attributable to members of the California National Guard, State Military Reserve, and Naval Militia. Yielding approximately 52 qualifying beneficiaries ($104 \times 50\% = 52$), with a benefit exclusion of \$10,000 for a total of approximately \$520,000 ($52 \times \$10,000 = \$520,000$) in additional excludable income. Assuming an average marginal tax rate of 5%, the revenue loss would be approximately \$26,000 annually.

ARGUMENT/POLICY CONCERN

Since the death benefit that would be provided by this bill is not available at the federal level, the benefit would be taxable for federal purposes. Thus, this would increase the complexity of California tax return preparation.

The operative date of the provision requiring the payment of the death benefit would be the date of an appropriation by the Legislature. However, the operative date of the provision providing the exclusion would be January 1, 2005. Should the bill be enacted with an appropriation prior to January 1, 2005, any death benefits paid during the 2004 taxable year would not be excludable from taxation. The author may wish to amend the bill to have both provisions operative upon appropriation in order to allow all death benefits paid under this bill to be excludable from income.

LEGISLATIVE STAFF CONTACT

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